IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4926 OF 2003

Dr. Jayashree L. Katare,
Adult, Indian Inhabitant residing
at M-2, Government Quarters,
Vichare Mal, Kawala Naka,
Kolhapur & Permanent resident
of 17-A, Jawahar Housing Society,
Civil Line, Solapur - 3. .. Petitioner

Versus

1. The State of Maharashtra,
through its Department of Revenue,
Finance & General Administration,
Mantralaya, Mumbai 400 032.

2. The Maharashtra Public Service
Commission, 3rd Floor, Bank of
India Building, Mahatma Gandhi
Marg, Mumbai 400 032.

3. Shri. D.K. Shankaran,
Principal Secretary,
Department of Revenue &
Forest, Government of
Maharashtra, Mantralaya,
Mumbai 400 032.

4. Shri. P.V. Kulkarni,
Secretary, Maharashtra Public
Service Commission, 3rd Floor,
Bank of India Building, Mahatma
Gandhi Marg, Mumbai 400 032. .. Respondents

Mr. V.M. Thorat for Petitioner.

Mr. C.R. Sonawane, A.G.P. for Respondent.

CORAM : F.I. REBELLO &
DR.D.Y.CHANDRACHUD,JJ.
DATED : FEBRUARY 28, 2006

Oral Judgment (Per F.I. Rebello,J.):

. Rule. Heard forthwith.

2. The Petitioner has passed M.B.B.S. examination and also completed Diploma in Public Health. Petitioner belongs to notified NT-C category. From the year 1990 upto the year 1994, the "Dhanagar" caste came to be included in NT category and continues to be so. The NT category in the year 1994 came to be bifurcated as NT-A, NT-B, NT-C and NT -D. In so far as Petitioner is concerned, she falls in a category of NT-C which carries reservation of 3.5% The case of the Petitioner is that on 100 pt roster, there ought to be reservation of 3 to 4 posts out of 100. On 29.3.1997, the respondent State passed a resolution providing for 100 pt. roster system to be made applicable to direct recruitment and 50 pt roster system for the purpose of promotions. The G.R. also provided that the backlog, if any, for direct appointments should be considered while implementing the said G.R.

3. It is the case of the Petitioner that between the year 1994 to 1998, 97+3 posts of Deputy Collectors were notified. If 100 Pt. roster system was applied then 3 posts should have been allotted to NT-C

category. However, only two posts came to be allotted to NT-C category. Similarly the Petitioner had applied for post of Tahsildar as also Sales Tax Officer. In the examination conducted, it is the case of the Petitioners that she stood 5th in the merit list in NT-C category and first in the women category belonging to NT-C category and as such if the 100 point roster system is implemented as per Government Resolution dated 29th March, 1997, she was certainly entitled to one of the posts of Deputy Collector or Tahsildar or Sales Tax Officer. On account of the incorrect and wrong implementation of the 100 point roaster system, less number of posts came to be allotted to NT-C for the year 1998 and as such the petitioner was not getting the post of her choice for which she was entitled to.

4. Consequent whereupon, the Petitioner filed Original Application No. 640 of 1999. The same came to be disposed of by the tribunal by order dated 29.9.2000. It appears that during the pendency of the petition, respondents by notification dated 17.8.2000 made appointments. These appointments were subject to the result of the application made by the Petitioner.

The tribunal recorded a finding that during the period of 1994 to 1998 at least one post should have been allotted to a women candidate in the post of Deputy Collector as also Tahsildar and S.T.O. Class I. The tribunal further observed that in the event the respondent No. 2 M.P.S.C. finds that the applicant fits in, in any of the said posts of her preference in the examination in question, i.e. for the year 1998, then it should recommend her name and the respondent No. 1 shall take action accordingly. If however, the three posts as above in each of the said cadres are already filled, then she should be considered in the vacancy existing or arising, as the case may be, but without disturbing the appointments already made. The exercise be done as early as possible. In other words, though the tribunal found that the Petitioner ought to be considered they chose not to interfere with the appointments already made. The tribunal instead directed that in case there was no vacancy, then Petitioner should be considered against the vacancy which may arise. This was perhaps to balance the equities in the matter. This order has not been challenged by the respondent State Government. As the Respondent State did not comply with the directions,

Petitioner filed Contempt Application No. 78 of 2001. An affidavit was filed by M.P.S.C. wherein it was set out that the case of the applicant has been considered in the examination held in 1998-99. They however, for the reasons set out in the reply could not accommodate applicant in any of the posts. The tribunal noted that in the circumstances, inspite of efforts made by the respondents to consider applicants case, it is not possible to accommodate her and found that there has been no deliberate disobedience of the tribunal's order.

. This order is dated 27.9.2002. Inspite of the fact that there is a direction to appoint Petitioner against the vacancy which may arise, the Petitioner was not appointed. Hence, the present petition by the Petitioner herein.

5. It is not necessary for us to go into the various aspects of the pleadings. A reply has been filed by M.P.S.C. No reply has been filed on behalf of the State Government, though sufficient time was granted. Today a communication has been produced before us dated 15.9.2003. With that communication, is annexed

a list of vacancies in so far as NT-C is concerned. Against the quota of 3.5% for N.T.C. candidates, the posts available to be filled in, are three plus one vacancy for women. In other words there are a total of four vacancies. These are vacancies which have occurred between 2002-03 according to Petitioners herein.

. It is in these circumstances, that we have to consider whether the Petitioner is entitled to any of the reliefs prayed for. Ordinarily, when a tribunal decides a matter, if the vacancies had not been calculated in terms of the percentages and the roster, then the appointments which were contrary to the roster had to be set aside, if the quota had not been followed. This was not done in the present case. A direction instead was issued to consider Petitioner's case against the vacancy which may exist and in the event there was no available vacancy against vacancy which may arise. The State did not challenge this direction.

. As a legal proposition, this was not the proper approach by the Tribunal. If appointments were made

not as per the roster, irrespective whether a person was appointed or not, if such a person was a party to the proceedings, the appointment ought to have been set aside. Apart from that, we are informed by counsel that the appointments made were subject to the result of the application. In the circumstances, those who were appointed knew about the fate of the appointments. Even if they were not parties, the illegal appointments had to be set aside and directions issued in favour of the Petitioner. Now vacancies have arisen but for a period subsequent to the interviews for which the Petitioner had applied. The Petitioner normally could not have been considered for future vacancies, unless there is a rule providing for appointment against future vacancies upto a particular period. Such a rule if it exists, must meet the tests of Articles 14 and 16 of the Constitution of India. At any date such a rule at the highest can be for a reasonable period of not more than one year in case of direct recruitments. The test is that otherwise, those who were eligible will be kept out of the selection process. The State may have been held not liable in contempt as held by the tribunal, as there was no willful default.

Nonetheless when the vacancy arose, the petitioner ought to have been considered in terms of the direction of the tribunal which had become final. As there are vacancies both for women and NT-C candidates, and as Petitioner was earlier selected by M.P.S.C. and on the peculiar facts of this case, respondents are directed to take steps to issue letter of appointment to the Petitioners within eight weeks from today, considering that the Petition is pending in the court for the last three years.

. Needless to say that the appointment will be from the date the letter of appointment is issued.

. The learned A.G.P. points out that he has received instructions from Mr. M.V. Sawant, Asst. (Revenue), Revenue Department, Section EI who was present in the court.

. Rule made absolute accordingly. There shall be no orders as to costs.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)